IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 87/ 2001
(Old No. 15/1986)

1-Chandra Singh, Constable, 17 C.P. S/o Murkhaliya Sinhg, R/o Village Bhatwari P.O. Gholteer (Gaucher), District Chamoli.	)	
	)	-(Deceased) Appellants
2-Karam Singh, Constable No. 122, S/o Jeet Singh R/o village Tillari P.O. Badechina, District Almora	)	

Vs.

State of U.P. - Respondent.

Sri Lokendra Dobhal learned counsel for the Legal heirs of Deceased appellant Karam Singh.

Learned A.G.A. for the State.

Date: 24-11-2003.

Hon'ble Irshad Hussain, J.

Both these appellants (since deceased) were convicted and sentenced under sections 304/34 I.P.C. and 201/34 I.P.C. to undergo R.I. for seven years and R.I. for four years and fine of Rs. 1000/- each respectively and appellant Chandra Singh was further convicted and sentenced under section 203 I.P.C. to undergo R.I. for two years, per judgment dated 17-12-1985 passed by the then Sessions Judge, Pithoragarh in the Sessions Trial No. 2/1983. By the same judgment two other accused were acquitted of the charges levelled against them.

2- Appeal as regards the appellant Chandra Singh (since deceased) stand abated and whereas appeal in regard to the appeal Karam Singh (since deceased) does not stand in view of the widow Smt. Ram Devi and two sons namely Jagdish Singh and Mohan Singh of the said appellant granted leave by the court to continue the appeal on their application submitted under the proviso to sub-section (2) of section 394 of the Code of Criminal Procedure.

3- briefly stated the facts are as follows:-

Both the appellants Chandra Singh and Karam Singh were police constables and posted at Baluakot Police Out Post of P.S. Dharchula, Pithoragarh in the

year 1976. On 27-8-1976 an incident of theft took place in the house of Smt. Deoki Devi of village Ghatibagar. She lodged F.I.R. at P.S. Dharchula against Dharam Singh S/o Param Singh of her village. Case under section 380 I.P.C. was accordingly registered against the said accused. S.I. Uma Shankar started investigation of the case but could not search and arrest the said culprit. He deputed both these appellants to keep vigil on the said culprit and effect the arrest.

On 6-9-1976 one Vijay Singh gave information that the culprit Dharam Singh had been seen in village Ghatibagar and he intend to flee across Indo-Nepal borhter. The appellants went there and arrested Dharam Singh and while they were on way to the police station Dharam Singh manage to escape from their custody. Lateron information was received that Dharam Singh was hiding in house of the Sarpanch whereupon both the appellant alongwith Baseer Ahmad and Vijay Singh and other villagers reached that place to apprehend Dharam Singh. At that time appellant Chandra Singh was carrying the gun belonging to Vijay Singh . On reaching the pointed spot appellant Chandra Singh gave a call to Dharam Singh to come out of the house. Dharam Singh then appeared on the Chhaja of the house and seeing the police constable took a jump from Chhaja and started running away towards north. According to the prosecution appellant Chandra Singh hen opened fire causing him gun shot injury on the left leg. Dharam Singh having sustained the injuries was not provided any medical aid by the appellants and, therefore, he succumbed to the injuries some time after mid night.

4- On 7-9-1976 at 9-15 A.M. appellant Chandra Singh, however, lodged information at P.S. Dharchula that Dharam Singh deceased sustained fracture in the left leg by a jump from Chhaja when he wanted to fled from there. Contrary to this, Param Singh, the father of Dharm Singh deceased sent a telegram to the Superintendent of Police (Pithoragarh) on 7-9-1976 alleging that his son had been murdered by the accused persons (the two appellants and their companions). In view of this case crime No. 69 under section 302 I.P.C. was registered against both these appellants and others vide G.D.No. 20 dated 7-9-1976 (Ex.Ka.32). S.I. Uma Shankar held inquest on the dead body and recorded statements of the witnesses and completed other formalities of the investigation. By order dated 15-9-1977 (Ex.Ka.27) the investigation was transferred to C.I.D. and then Sri Nag Chandra Nath Inspector C.I.D. took up the investigation in his hand on 3-10-1977. On completion of the investigation

and after obtaining sanction under section 197 of the Code of Criminal Procedure charge sheet (Ex.Ka.28) under sections 302/201/203/114/34 I.P.C. was submitted against these appellants and other. The gun used in the offence was recovered on the pointing of Kheep Singh who was also charge sheeted but had been acquitted alongwith another accused Baseer Ahmad by the Sessions Judge.

5- Appellant Karam Singh pleaded not guilty and contended that he has been falsely implicated.

6- In order to bring home guilt to the two appellants and others prosecution relied upon the evidence of six witnesses. Of these, P.W.1 Chandra Singh P.W.2, Tilok Ram were shown as witnesses of fact, P.W.3, Dr. G. Swaroop performed post mortem on the dead body of Dharam Singh and prepared the post mortem repsort (Ex.Ka.1). He gave evidence that the death was caused as a result of shock and haemorrhage on account of fire arm injury. P.W.4, Harish Chandra, Post Master is a formal witness. P.W.5, Nag Chandra Nath, Investigation Officer proved the steps taken and formalities observed in the investigation of the case. He also proved charge sheet, P.W.6, Head Moharir Harak Singh (P.W.4) proved G.D. (Ex.Ka.32) of registration of the case against the appellants and others. no evidence was adduced in defence.

7- The learned sessions Judge on his appreciation of the evidence of the prosecution placed implicit reliance on the evidence of witness of fact P.W.1, Chandra Singh and other relevant evidence and found the charges proved beyond doubt against both the appellants and convicted and sentenced them as aforesaid. The learned Sessions Judge was on the view that the appellant Chandra Singh fired at Dharam Singh in furtherance of the common intention of himself and appellant Karam Singh and further that with the intention of screening themselves from legal punishment got false information recorded about the death of Dharam Singh deceased.

8- I have heard the learned counsel for the legal heirs of Karam Singh and the learned A.G.A. and have carefully considered the evidence on record, the circumstances and the probabilities of the case.

9- The board features of the case in regard to the homicidal death of Dharam Singh deceased, place and time and incident as alleged by the prosecution have not been disputed by the learned counsel of the legal heirs of the Karam Singh. The main thrust of his argument was the constable Karam Singh has had no role in the firing of gun shot hitting Dharam Singh deceased

and that the evidence on record itself indicate that there was no pre-arranged plan that the victim need to be eliminated instead of effecting his arrest for an in connection with the theft case registered against the victim. To bring home the said point of view attention was drawn to the evidence of P.W.1, Chandra Singh. This witness claimed that on the day of the incident at about 8 P.M. he had seen the appellants and other accused near the place of the incident and at that time constable Chandra Singh was possessed of a gun. The witness was on way to his house. He went about 20-25 steps forward and then heard noise of fire arm shot. He came back to the place of the incident where he found the two appellants and one Vijay Singh standing there. He also found victim Dharam Singh lying on the ground while crying due to pain as a result of bleeding injury on the calf of the leg. On being inquired Dharam Singh told him that he had been fired at by (appellant) Chandra Singh. At that point of time the witness claimed to have been scolded by said Chandra Singh and asked him to leave that place. The witness and another person present namely Tilok Ram left that place. In cross-examination the witness testified that when he came back at the place of firing of gun shot he had found only two persons there and they were Tilok Ram and Param Singh. Param Singh is the father of the victim Dharam Singh.

10- In view of the above evidence of the witness learned counsel argued that the witness has not affirmed the presence of Karam Singh at that place and further that his evidence is categorical that the victim himself gave out that the constable Chandra Singh had fires gun shot causing injury to the victim. Another witness of the fact Tilok Ram (P.W.2) did not support the prosecution version and was declared hostile. He had denied his presence near the place of the incident alongwith Chandra Singh (P.W.1). The learned counsel therefore further submitted that even sole testimony of P.W.1 do not prove that appellant Karam Singh was with the appellant Chandra Singh when the shot was fired at the victim. No doubt Karam Singh was also deputed for search of the said victim in connection with the incident of theft but the evidence on record is not sufficient to prove the prior concert with constable Chandra Singh and pre-arranged plan to commit the offence. What made constable Chandra Singh to be in such a frame of mind as to fire gun shot at Dharam Singh deceased can not itself be taken to suggest that it was so under a pre-arranged plan with the companion constable Dharam Singh. Even if Karam Singh was not present there at the place of incident but still the circumstances must be there to show

the both the appellants shared the common intention and in furtherance of the same the victim was fired at by the gun wielded by one of them namely Chandra Singh. As stated it is not so. Therefore, in the peculiar facts and circumstances of the case I feel no hesitation in accepting the argument of the learned counsel that Karam Singh has had no common intention with the constable Chandra Singh to commit the offence of murder of Dharam Singh and further that there is nothing to indicate that he was instrumental in giving the false information about the incident at the police station. It is the case of the prosecution that Chandra Singh went to the police station on 7-9-1976 and lodged information at 9-15 A.M. alleging that Dharam Singh deceased had sustained fracture in the left leg by jumping down from Chhaja in order to make his escape possible from there and to avoid being arrested. Therefore, the charge under section 201 I.P.C. was also not established beyond reasonable doubt against him.

11- The learned Sessions Judge did not take in to account these specific features of the case and also held Karam Singh guilty of the offences merely on the assumption that he was also deputed and went with Chandra Singh to effect the arrest of Dharam Singh deceased.

12- For the above reasons and discussion I come to a definite conclusion that the charges were not established beyond reasonable doubt against the appellant Karam Singh and, therefore, the said deceased appellant is to be held not guilty of the charges levelled against him and to be acquitted accordingly. In other words the appeal beign pursued by his legal heirs as stated earlier need to be and is partly allowed. The judgment and order dated 17-12-1985 passed by the learned Sessions Judge, Pithoragarh in S.T.No. 2/1983 convicting and sentencing appellant Karam Singh deceased under section 304/34 and 201/34 I.P.C. is set aside. Fine if, deposited, shall be refunded to his legal heirs.

(Irshad Hussain, J.)

ISB